IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2353 OF 2006

Rashmi Kant D. Vyas .. Petitioner.

V/s.

Union of India & Others .. Respondents.

Mr.Ashok Saraogi with Mr.Shreeprakash Sinha i/b. Mr.Ashok Bhatia for the petitioner.

Mr.S.M. Shah with Mr.P.P. Kakade for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 7TH APRIL, 2006.

P.C. :

We heard Mr.Ashok Saraogi, the counsel for the petitioner.

2. He pressed only one point. The point is that sale of attached property is beyond the time prescribed in Rule 68B of Schedule II appended to Income Tax Act, 1961 and, therefore, illegal. He submitted that the sale of attached immovable property could only be effected within four years from the date the orders were communicated to the petitioner (which in the present case is 25th March, 2002 as per revenue's own case) and since four years have already expired, the whole exercise for sale of

subject property is bad-in-law.

3. That the petitioner is a defaulter in payment of the income-tax dues is not in dispute. According to his counsel, the income tax dues in principle are Rs.14,00,000/- while according to revenue, the income tax dues along with interest and other charges exceed Rs.1,12,00,000/- as on date. For recovery of the aforesaid income tax dues, it appears that the three properties namely flat No.105-A, Kanakia Park-1, Thakur Complex, Kandiwali (E), Mumbai - 400 101, 106-A, Kanakia Park-1, Thakur Complex, Kandivali (E), Mumbai and Flat No.E-103, Gokul Accord Co-operative Society, Thakur Complex, Kandiwali (E), Mumbai were attached. In the present case, the counsel for the petitioner confined the writ petition with regard to Flat No.E-103, Gokul Accord Co-operative Society., Thakur Complex, Kandivali (E), Mumbai.

4. Rule 68B in Schedule II appended to Income Tax Act provides time limit for sale of attached immovable property. It reads thus :

> "Time limit for sale of attached immovable property.
>
> 68B. (1) No sale of immovable property shall be made under this Part after the expiry of four years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of

which the immovable property has been attached has become conclusive under the provisions of section 245-I or, as the case may be, final in terms of the provisions of Chapter XX:

Provided that where the immovable property is required to be re-sold due to the amount of highest bid being less than the reserve price or under the circumstances mentioned in rule 57 or rule 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

(2) In computing the period of limitation under sub-rule (1), the period -

(i) during which the levy of the aforesaid tax, interest, fine penalty or any other sum is stayed by an order or injunction of any court; or

(ii) during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or

(iii) commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under his Schedule and ending on the day the appeal is decided,

shall be excluded :

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(3) Where any immovable property has been attached under this Part before the 1st day of June, 1992, and the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has also become conclusive or final before the said date, that date shall be deemed to be the date on which the said order has become conclusive, or, as the case may be, final.

> (4) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule".

5. What is provided in Rule 68B is that sale of immovable property for recovery of tax under Part III or Schedule II shall be made within four years from the end of financial year in which the demand become conclusive under Section 245-I or final in terms of Chapter XX. The counsel is not in a position to tell us the date when the demand became conclusive under Section 245-I. Once that date is known, then as per Rule 68B, sale of immovable property for recovery of tax has to be effected within four years from the end of financial year in which the demand became conclusive. In this view of the matter, the contention raised on the basis of Rule 68B has no basis. Even if we assume that the assessment order was served on 25th March, 2002, we find the sale within the time prescribed under Rule 68B because the sale was effected on 8th March, 2006. Merely because confirmation of sale is to take place on 8th April, 2006, it cannot be said that there is violation of Rule 68B.

6. The counsel for the petitioner, by way of

seeking mercy, then submitted that in the auction that took place on 8th March, 2006, the highest bid was of Rs.19,00,000/- which has been accepted by the department and the petitioner is ready and willing to deposit Rs.25,00,000/- and the sale of the said flat may not be confirmed to enable the petitioner to challenge the demand of income tax dues. We gave time to the counsel for the petitioner upto 3.00 p.m. to bring pay order / banker's cheque or demand draft in the sum of Rs.25,00,000/-. At 3.00 p.m., Mr.Ashok Saraogi, the learned counsel for the petitioner submitted that it was not possible for the petitioner to arrange for banker's cheque or pay order within the time granted by the Court.

7. We find no merit in the writ petition and dismiss the same.

8. Oral prayer for stay is rejected.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)